

रेल दावा अधिकरण, नागपुर पीठ, नागपुर
THE RAILWAY CLAIMS TRIBUNAL: NAGPUR BENCH, NAGPUR

QUORUM: HON'BLE SHRI SANJEEV AGGARWAL, MEMBER (JUDICIAL)
HON'BLE SHRI SYED NISHAT ALI, MEMBER (TECHNICAL)

Case No.: OA (IlU)/NGP/37/2022
Date of Filing - 24.05.2022
Date of Judgement - 21.12.2023

- APPLICANT'S:**
1. Mangala Wd/o Narayan Pawar
Age 28 years, Occu. : Housewife
 2. Sachin S/o Narayan Pawar (Minor)
Age 03 years, Occu. : Nil
 3. Limbaji S/o Atisha Pawar
Age -58 yrs., Occu - Labour
 4. Kusum W/o Limbaji Pawar
Age -55 yrs., Occu - Housewife

R/o – Sukli, Post – Ukali Pen
Tahsil - Washim, Dist- Washim
Maharashtra - 444505

V/s

RESPONDENT: Union of India,
through the General Manager,
South Central Railway, Secunderabad.

VALUE OF CLAIM: Rs. 8,00,000/-

Applicant by Advocate N.R. Mankar
Respondent by Advocate S. Mediretta

JUDGEMENT

Basic Details relating to accident as contained in the Application:-

- | | | |
|----|------------------|-----------------------------|
| a) | Date of accident | : 21.07.2021 |
| b) | Person deceased | : Narayan S/o Limbaji Pawar |

- c) Relationship to the claimants : Applicant No.01 is wife of deceased applicant No. 02 is minor son of the deceased, applicant No.3 father of the deceased and applicant No. 4 mother of the deceased.
- d) Untoward incident narrated : The case of the applicants is that on 21.07.2021, the deceased was travelling by passenger train from Kanhargaon Naka railway station to Akola Railway station to meet her relatives whose wife was pregnant. To perform the journey the deceased had purchased the journey ticket which is lost in the incident. When the deceased not returned back the relatives made enquiry of the deceased from the relatives but the deceased could not be found. The police have given the news on daily newspaper after noticing the said news the relatives of the applicant namely Ravi Sada Pawar inform about the said incident to the parent of the deceased accordingly applicant came to know that the deceased was meet with railway accident and died. The applicant went to the office of the GRP/Akola and received the details about the incident. The applicant came to know that the deceased met with an untoward incident and died on the spot. The deceased accidentally fell down from the passenger train due to sudden jerk in between Jaulka to Amanwadi railway station near KM 796/03 Dist.- Akola and met with an untoward incident of accident. The deceased was possessing the valid journey ticket and he was a bonafide passenger.
- f) Jurisdiction: The accident occurred on 21.07.2021 near KM No. 796/03 In between Jaulka to Amanwadi railway Station. Dist. – Akola, Maharashtra, this Bench of the Tribunal has territorial jurisdiction.

2. Salient features of reply:

a) Averments in reply: It is denied by the respondent counsel that the deceased was travelling on 21.07.2021 from Kanhargaon Naka railway station to Akola Railway by passenger train and accidentally fallen down at mid-section when the train was in motion. It is further denied that, deceased has boarded in the train with valid journey ticket and the same was misplaced at the time of accident, therefore the deceased was not a bonafide passenger. Respondent railway also stated that there is no eye witness to the incident and also not known under what circumstances the incident was occurred. There was no information to any Guard/Loco pilot of

any train passed through the spot i.e. Jaulka-Amanwadi Railway station at KM No. 796/3-4 on the alleged day of incident and there was no ACP done in the train which established that it is an untoward incident. The respondent railway specifically submitted that the applicant came to know about the incident after one month which clearly shows that the deceased was not involved in an untoward incident.

Thus, the death of the deceased in occurred an untoward incident is false and bogus and it is not the case of falling down of passenger from the train. Therefore, the Railway is no way responsible for the death of the deceased and claim for compensation from Railway administration does not arise in this application.

b) Crux of DRM Report:- After investigation, it is concluded in DRM Report that the as per the statement of the wife of the deceased she stated that she does not know when, where and how her deceased husband had gone. She also did not know whether the deceased had purchased the journey ticket which clearly shows that the applicant have filed this case in the influence of someone to get undue compensation. As per the statement of the Guard and driver of the train that no passenger was fallen down from his train and no ACP had done at place of incident and no one had informed him about the fallen down of any passenger from the train. There is no jerk or jolt to the train on the incident day. That there is no any eye witness of the incident and no one know about in which train the deceased was travelling on incident date. In the spot and inquest panchanama prepared by the police no railway journey ticket was seized from the deceased.

c) Line of defense at trial, if pleaded or if it contradicts DRM Report:– None.

d) Precedent cited and their import: None

3. Evidence & Documents: The applicant Smt. Mangala Wd/o Narayan Pawar was examined as AW-1 and documents as Exh. A-1 to A-18 were marked on behalf of the applicants. Smt Jaya w/o Dharmraj Balkande was Examined as RW-1 and documents marked as Exh. R-1 & R-2 which is part of DRM report. Shri Hirman Sopan Dhabale was examined as RW-2 and his document marked as Exh R.-4. The respondent railway placed on record DRM's enquiry report along with a number of documents as prepared during the course of such enquiry.

4. Issue-wise Reasoning for the judgement:

ISSUE No. 2 & 3

- 2. Whether deceased was a bona fide passenger of the train on the relevant day, with valid journey ticket?**
- 3. Whether the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application within the meaning of Section 124-A r/w 123 (c)(2) of Railways Act?**

Both these issues being interconnected are being taken up together for discussion and decision.

5. The case of the applicants is that on 21.07.2021, the deceased was travelling by passenger train from Kanhargaon Naka railway station to Akola Railway station by purchasing the valid journey ticket which is lost in the incident. The police have given the news on daily newspaper after noticing the said news the relatives of the applicant namely Ravi Sada Pawar inform about the said incident to the parent of the deceased accordingly applicants came to know that the deceased was meet with railway accident and died. The applicants went to the office of the GRP/Akola and received the details about the incident. The deceased accidentally fell down from the passenger train due to sudden jerk in between Jaulka to Amanwadi railway station near KM 796/03 Dist.- Akola and met with an untoward incident of accident. The deceased was possessing the valid journey ticket and he was a bonafide passenger.
6. The inquest proceedings in this case were started by the GRP/Akola, on receipt of Memo (Exh A-1) issued by Station Master/Jaulka/S. C.Rly on 21.07.2021 wherein it is written that “आपको सूचित किया जाता है कि गेटमैन, गेट नं. L.C. No. 102 की श्रीमती जया डी. बालखंडे APM/UXX @ JUK Stn ने बताया कि between JUK-AMW स्टेशन at KM 796/3 पर एक अनजान पुरुष व्यक्ति पड़ा हुआ है। अंदाजे उसका उम्र 40 (चालीस) वर्ष होगा इसलिए आपको लिखित में सूचित किया जा रहा है.” On receipt of the information GRP/Akola attended the spot and prepared the spot and inquest panchnama Marg Khabri (Accidental Death Report) and registered the case no. 11/2021 under section 174 of Cr.PC. In the spot panchanama it is mentioned that the deceased wear red color half T- Shirt, it bears Airtel-4G and blue pant wear by the deceased and dark red underwear. On full inspection of the body nothing is found from the person of deceased. Police has not seized anything from the person of

deceased. During the panchnama no railway ticket or pass was seized from deceased.

7. The counsel for the respondent denied that the deceased was travelling on 21.07.2021 from Kanhargaon Naka railway station to Akola Railway station by passenger train as no journey ticket was found from the deceased, therefore the deceased was not a bonafide passenger of the train. In the spot panchnama prepared by the police no journey ticket or pass was recovered from the deceased. The deceased was not travelling and neither fallen down from the running train. The respondent specifically submitted that there is no eye witness to the incident and there was no ACP, jerk and Rush to the train and no one has informed him about falling down of any passenger from the train to the guard of the train or any railway authority. As per the inquest panchnama no journey ticket was found except clothes of the deceased which established that deceased had not travelled by any train.
8. The applicant No.1 Smt. Mangala Wd/o Narayan Pawar was examined herself as AW-1. She deposed that she is illiterate and doing agriculture work. She is not aware about the compensation amount as claimed by her in the present proceeding. She is not aware about the date of incident and she was not accompanying with the deceased during the alleged incident. She has not personally witnessed him purchasing the journey ticket for the alleged incident and she has not filed the railway ticket in the present proceedings. She is not aware about the name and number of the train though the deceased was travelling by passenger train.
9. Section 124-A of The Railways Act, 1989 (for short, 'the Act') entitles a 'passenger' to claim compensation, who has been injured or the dependents of the deceased, who has been killed in an untoward incident as defined under Section 123 (c) of the Act *ibid*. The word 'passenger' has been defined under Section 2(29) of the Act as a person travelling with a valid pass or ticket. As per Section 124 (A) "passenger" includes – (i) a railway servant on duty; and (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident. It is only when the fact of the injured or the deceased being a bonafide passenger of the train is established, the question of payment of compensation arises in case the incident is held

to be an untoward incident. Therefore, if a person has purchased a valid ticket, then only he is a bonafide passenger of the train.

10. It is argued by the learned counsel for the respondent railway that the deceased was not a bonafide passenger and denied that the deceased was having a valid journey ticket from Kanhargaon railway station to Akola railway station in his possession. Nothing is mentioned by the investigating authority in the spot and inquest panchanama regarding the recovery of journey ticket from the deceased which means the deceased was not in possession of journey ticket. It is also argued by the respondent counsel that the applicants have stated that the deceased was travelling by passenger train as bonafide passenger. It is further argued by the counsel of the respondent that in the light of said facts, the burden to prove that the deceased was bona fide passenger was not discharged by the applicants, hence the deceased was not a bona fide passenger and the present case is liable to be dismissed.
11. We have gone through the pleadings, documents and evidence available on record. we have also considered the argument on the behalf of respondent railways and applicants. In this regard, it is held by the Hon'ble Supreme Court in the matter of Union of India v/s Rina Devi that:

 "17.4 We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."
12. On perusal of all the above, it is clear that the applicants can discharge the burden for proving bona fide passenger of the deceased by filing of affidavit of the **'relevant facts'**.
13. Now, it is to be decided whether the applicants have discharged their burden to prove by way of filing of affidavit of AW-1, Smt. Mangala Wd/o Narayan Pawar that the deceased was a bona fide passenger. AW-1, Smt. Mangala Wd/o Narayan Pawar in her cross-examination admits

that she was not accompanying the deceased and was not witnessed the deceased purchasing the journey ticket. There is nothing on the record to show that deceased had purchased or was in possession of a valid journey ticket.

14. DRM's Enquiry Report also drawn the conclusion that the deceased was not a bona fide passenger as no railway ticket was recovered from him. Based on the pleading made by the parties and the evidence on record, the train journey of the deceased cannot be established in the absence of journey ticket nor through a cogent witness. As per the apex court judgment in Rina Devi the initial onus lies on the applicants by filing affidavit. In the instant case the applicant fails to discharge the initial onus and not shifted burden on the respondent railway. As per Rina Devi case, the loss of ticket can be considered and the deceased can be considered as a bonafide passenger provided if an affidavit is filed with relevant facts and it should corroborate with the incident. In the instant case AW-1 has admitted that she is not an eye witness either to the purchase of the ticket or for travel of the deceased. Hence as per our view the deceased was not a bona fide passenger and the burden is not shifted on the respondent railway.
15. So far as, the manner and circumstances leading to the death of the deceased is concerned, it is seen that nobody had seen the deceased having boarded any train. Nobody also had seen him as falling down from any train. On receipt of Memo (Exh. A-1) issued by Station Master/ Jaulka/S.C.Rly on 21.07.2021 GRP/Akola started the investigation.
16. On duty Pointsman Smt. Jaya W/o Dharmraj Balkand was examined as RW-1 on 07.06.2023 and documents are exhibited as R-1 to R-2 and is a part of DRM Report. She deposed in the court that no train had passed prior to passing of Akola – Purna passenger train No. 07773. After passing of the said train one unknown person informed her that one person is lying beside the track. Further she informed to Station Master / Jaulka immediately. In her affidavit submitted in the court she stated that on 21.07.2021 she was on duty from 08.00 hrs. to 20.00 hrs. as a pointsman at level crossing gate No.102 between Jaulka - Amanwadi. At 10.30 hrs. DEMU 07773 Purna- Akola passenger train passed and thereafter half an hour later one unknown person told me verbally that towards Anamwadi one unknown person is lying near the track. She immediately saw the spot from gate No.102 as the spot was

visible from gate No. 102 and informed about the same to station Master Jaulka. She also stated that she has not seen any passenger falling down from any train on 21.07.2021 nor any information regarding the death of any passenger by accidental falling down from the said train or any other train

17. Shri Heeraman Sopan Dhabale/ Guard /SCR Nanded was examined as RW-1 on 07.06.2023 and documents are exhibited as R-3 to R-4. He stated in the court that during lockdown period there was no link for his duty and he was working as Guard of Goods and Passenger train. He was on duty on day of incident. After giving green signal to station master, he sit in his Gurad compartment. He was in his compartment when train was passing from KM No 796/03. He cannot see any person falling from the train as he is sitting in the guard compartment. He have not received any information about falling down of any passenger from his train. There was no rush and no jerk or ACP on the day in his train in that section. In his affidavit submitted in the court he stated that on 21.07.2021 he was on duty and working as guard from Purna to Akola of train No. DEMU 07773 passenger train. On 21.07.2021 no untoward incident of accidental falling down of any passenger from running train had happened between Jaulka railway station to Amanwadi Railway station near KM. 796/03 by aforesaid train and nor any information regarding death of any passenger by accidental falling from said train. On 21.07.2021 there was no other passenger train except the aforesaid train. During the entire journey from Purna to Akola the train did not receive any jerk nor there occurred any ACP.
18. In the DRM's enquiry report also, the conclusion drawn is that during investigation, no eyewitness or evidence was found who saw the deceased was falling from the moving train. Due to non-availability of journey ticket, it cannot be ascertained the travel of the deceased. Further it cannot be ascertained in the absence of any evidence how the unexpected incident happened to the said person. The DRM report was not rebutted by the applicants either through the documentary evidence or eyewitness. Thereby the applicant counsel admitted the DRM Report and become conclusive.
19. After perusal of record & arguments advanced by both sides, it is clear that AW-1 is not an eyewitness to the incident and purchase of journey ticket by the deceased. The applicants neither examined any

eyewitness who could establish the circumstances under which the death of Shri Narayan Limbaji Pawar (deceased) had occurred, nor they have stated that there was any eyewitness to the incident. The fact Narayan Limbaji Pawar died, on account of an untoward incident, must be proved by the applicants in order to claim compensation under Section 124-A of the Railways Act.

20. It is also held in case of Union of India V/s Rina Devi (CA No.4945 of 2018 arising out of SLP (C) No.10223) that ***“mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained.”*** The applicant No. 1, wife of deceased, stated in her statement given to the RPF on 28.07.2022 that she does not know when, where and how her husband (deceased) had gone on the alleged date of incident i.e.21.07.2021. In her affidavit she stated that that on 21.07.2021 her husband Shri Narayan Limbaji Pawar (deceased) was travelling by passenger train from Kanhargaon railway station to Akola railway station to meet with her relatives. To perform the journey the deceased had purchased the journey ticket which is lost in the incident. When the deceased not returned back to home the relatives made enquiry of the deceased from the relatives but the deceased could not be found. The police have given the news on daily newspaper after noticing the said news the relative namely Ravi Sada Pawar informed about the said incident then applicant came to know the deceased was meet with railway accident and died. Her husband namely Narayan Limbaji Pawar accidentally fall down from the passenger train due to sudden jerk in between railway station Jaulka to Amanwadi near KM 796/03 and meet with an untoward incident.
21. From the record it is seen that alleged incident occurred on 21.07.2021 and Limbaji Atisha Pawar visited Rly Police Akola on 19.08.2021 i.e. nearly after one month of the alleged incident, to identify the deceased. It remains unexplained what that during this period of one month what efforts were made by applicants to search the deceased. No missing FIR was filed by the family members. Apparently entire story of deceased travelling his accidental falling from train is false and concocted. It is clearly shows that the deceased was not involved in an untoward incident.
22. In view of above we conclude that the deceased was neither a bonafide passenger nor involved in an untoward incident as defined in Section

123 (c) (2) of the Railways Act. Both the issues decided accordingly against the applicant.

ISSUE No. 01

23. In view of the findings on issue No.2 and 3, discussion of this issue would be redundant exercise.

ISSUE No. 4 (Relief)

24. In view of the above it is held that applicant is not entitled for any compensation and this issue is disposed of accordingly.

ORDER

25. The claim application is dismissed with no order as to costs.

File to be consigned to the record-room.

Dictated to the P.S. transcribed by him, corrected and pronounced by us in open Tribunal on 21.12.2023.

(Syed Nishat Ali)
Member (Technical)

Nagpur.

Date : 21.12.2023

SK#

(Sanjeev Aggarwal)
Member (Judicial)